

REMARKS

The applicants have carefully considered the official action of February 5, 2008. The official action required an election between claims 21, 22, 24, 25, and 38-41 (Group I) and claims 27, 29, 32-37, and 42 (Group II). In accordance with the requirements of 37 C.F.R. § 1.143, applicants hereby provisionally elect claims 21, 22, 24, 25, and 38-41 (Group I) for further prosecution in this application.

Accordingly, by way of this response, claims 27, 29, 32-37, and 42 have been withdrawn without prejudice to their further prosecution in this application.

However, as set forth below, the applicants traverse the restriction requirement and request reconsideration and withdrawal of the restriction requirement in view of the following remarks.

The Manual of Patent Examining Procedure (M.P.E.P.) states that there are two criteria which must be met for a restriction requirement to be proper: (1) the inventions must be independent or distinct as claimed; and, (2) there must be a serious burden on the examiner if restriction is not required. M.P.E.P. § 803. In this instance, although the examiner states that the claims of Group I and Group II are distinct, the examiner fails to demonstrate that a serious burden would be placed on the examiner if election were not required. “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” M.P.E.P. § 803.

Indeed, the official action makes no mention of any burden. Further, no “explanation of separate classification, separate status in the art, or a different field of search” has been provided. M.P.E.P. § 803. Thus, for at least this reason, the applicants request that the requirement for restriction be withdrawn.

Further, the examiner attempts to treat the claim groups as combination and subcombination under M.P.E.P § 806.05. To assert such a position, the examiner must show that the combination as claimed “does not require the particulars of the subcombination as claimed for patentability.” M.P.E.P. § 806.05(c). However, there is no stated basis or support for such a showing in the official action. For at least this reason, the restriction requirement must be withdrawn.

The Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required during the pendency of this application to Deposit Account No. 50-2455.

Respectfully submitted,

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